

IN SENATE OF THE UNITED STATES.

FEBRUARY 2, 1848.

Submitted, and ordered to be printed.

Mr. WESCOTT, made the following

REPORT:

[To accompany bill S. No. 123.]

The Committee on the Judiciary, to whom was referred the petition of Jacob Bigelow, administrator of Francis Cazeau, report:

This claim has been repeatedly before Congress, and has several times been fully investigated by committees of the Senate and the House of Representatives, and by officers of the departments under the orders of one of the Houses.

This committee agree in the reasoning and conclusions of the report of the Committee on the Judiciary, of the House of Representatives, made on this claim, March 27, 1844, Rep. 135, 1st session, 28th Congress, which is adopted by the committee, and a bill for the relief of petitioner, similar to that reported in his favor in 1844, allowing him the interest up to the time he is paid his demand, is also reported. The petition and the report above mentioned are also subjoined to this report, in order that they may be printed for the use of the Senate.

HOUSE OF REPRESENTATIVES.—March 27, 1844.

The Committee on the Judiciary, to whom was referred the petition of the heirs of Francis Cazeau, report:

That the claim is founded on supplies which the petitioners charge to have been provided by their ancestor for the use of the American army during the revolutionary war, and for other services rendered the American cause. The claim was at an early period brought before Congress, and has been repeatedly pressed upon its attention since. The original claimant was a resident of Canada during the revolution, was a man of character and of influence, and a warm and zealous supporter of American independence. The papers accompanying the petition are voluminous, and the questions involved somewhat peculiar and not free from difficulty. In 1784,

a committee reported sundry resolutions favorable to the claim, and advised the payment of \$5,000 in part; which report and resolutions were concurred in by Congress. On a reference to the superintendent of finance, "to take order," he (Robert Morris) reported the claim back to Congress with objections. In 1785, the claim was referred to a commissioner who had been appointed for the settlement of the accounts of such Canadian refugees as had furnished the American armies with supplies, who was required to report to Congress. The commissioner reported in favor of this claim. It was then referred to the Board of the Treasury, who reported against it. In 1786, Congress, in obedience to the last report, repealed the resolutions of 1784, in favor of the claim. It thus appears that the Congress of 1784, and the Commissioner of Claims, reported in favor of the claim; whilst the Board of the Treasury, and the Congress of 1786, rejected it. It does not appear that any further action was had by Congress in regard to the claim until 1817, when a report was made in favor of it by a committee of the Senate. In obedience to this report a bill was passed appropriating \$42,737 97, to be paid "to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his assignee or attorney, or other person lawfully entitled to receive the same." The amount thus appropriated was drawn from the treasury by J. B. Stewart, under an assignment and power of attorney from Francis Cazeau to Francis Carbreaux, which assignment the present claimants charge to have been fraudulent, and the power of attorney to have been vacated by the death of the maker. This presents the question, whether the heirs of Francis Cazeau, the present claimants, were alone entitled to receive the amount appropriated under the act of 1817; and whether the payment already made is a bar to any portion of the claim? It appears that, in 1807, Francis Cazeau did, by deed duly executed, transfer and assign over to Francis Carbreaux three-fourths of his claim on the United States, and give him an irrevocable power of attorney to prosecute and receive the same, as well as the remaining fourth; that, in 1808, he instituted criminal proceedings in France against Carbreaux, for the purpose of revoking this agreement, and of having his papers surrendered. It does not satisfactorily appear what was the result of those proceedings; though it does appear that Cazeau obtained possession of the original papers, which he forwarded to Gen. Mason, of Georgetown, in 1809, to be again presented to Congress; they were not presented, however, but returned to the grandson of Cazeau, who held them at the time of the old man's death in 1815. That shortly after the death of Cazeau, with copies of these papers, which were to be had from the register's office in Paris, and under a power of attorney from Carbreaux, J. B. Stewart succeeded in effecting the passage of the act of 1817, and of drawing the money from the treasury. There can be no question that a power of attorney, though professing on its face to be irrevocable, is revoked by the death of the grantor, though there may be some doubt whether such would be the case of a power coupled with an interest; but, however that may be,

the difficulty in the present case is not as to the revocation of the power, but as to the existing validity of the assignment. In 1836, under a resolution of the Senate, the whole matter was referred to the Solicitor of the Treasury, to inquire—1st. As to the justice of the original claim; 2d. Whether J. B. Stewart was the authorized agent of the claimants; 3d. Whether the present memorialists were the heirs of Francis Cazeau. The report is a very full one, and the answer on each point is in favor of the claimants—(See Senate doc. 24th Cong. 1st sess. p. 428.) But the report of the Solicitor does not remove the difficulty as to the assignment. It may be true, (as is alleged by the claimants, and as the report concurs in,) that Carbreaux paid no part of the consideration expressed in the deed, and that it was fraudulently obtained; still, it had not been cancelled by any judicial tribunal, nor had there been any reconveyance. It simply appears that there was a contest about the papers, a citation and answer by Carbreaux, with a protest against any surrender of his right, and the papers being afterwards in Cazeau's possession. There was no action on the part of Carbreaux, until after Cazeau's death; but notice was given the government, by Cazeau, of his still holding the claim. It is possible the circumstances were such, that a court of equity would have enjoined the treasury from paying over the money to Carbreaux; yet the money was paid without any notice or suspicion of fraud. It then becomes a question of loss between the United States and the claimants; and as the money has been once paid in good faith, and to one duly authorized to receive a portion of it, under an assignment, the committee are of opinion there is no obligation to pay it over again. Under this view of the case, the committee report a bill for one-fourth of the sum appropriated under the act of 1817, with interest from May, 1818, the time of the demand in behalf of the heirs of Francis Cazeau.

Statement.

One-fourth of the appropriation under the act of 1817	\$10,684 50
Interest from 1818, say 26 years.....	16,667 82
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Amount due the heirs.....	27,352 32
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*To the honorable the Senate and House of Representatives of the
United States in Congress assembled:*

The petition of Jacob Bigelow, administrator on the estate of François Cazeau, late a merchant of Montreal, in Canada,

MOST RESPECTFULLY SHOWETH:

That, at the commencement of the American revolution, Mr. Cazeau, inspired with an enthusiastic love of liberty and a deep con-

viction of the justice of our cause, embarked at that early day in the cause of American independence; that he used his utmost exertions to induce the Canadians to adopt his opinions; aided in circulating the proclamations of our commander-in-chief addressed to the Canadians, and other publications in support of our cause; furnished supplies for our army in the neighborhood of Canada, as well as information of the highest importance to its leaders, and on all occasions extended his protection to the utmost of his power to the Americans who fell into the hands of the British authorities, and relieved their distresses by the most liberal use of his ample fortune; the consequences of which were the confiscation of his property to an amount of more than three hundred and fifty thousand dollars; the utter ruin of his fortune and prospects; a long and tedious imprisonment of nearly three years in Quebec. When, by escaping, he gained liberty for his person, it was to wander an exile from his home, to spend more than twenty years of his life in fruitless solicitations for justice to the governments of the United States and France, and finally, after thirty years separation from his family, (who had long before been rudely thrust into the streets by British soldiers,) he died in Paris in utter poverty, a dependant on the charity of two old women, who were once domestics in his family, themselves in narrow circumstances; that this statement is fully supported by numerous affidavits and certificates now on file in the Treasury Department; that previous to Mr. Cazeau's imprisonment, he furnished provisions and clothing for the American army, which has been the subject of the favorable consideration of Congress on repeated occasions; that during the session of 1816-'17 Congress, with great unanimity, appropriated upwards of \$42,000 for the payment of this part of Mr. Cazeau's claim. This sum was, however, illegally paid to Josephus B. Stewart, an impostor, who presented no authority to receive the money beyond what any stranger might have presented, and no part of the money ever reached the heirs. Since that time, bills have repeatedly passed one or the other branches of Congress to repay this sum with interest to the rightful heirs; that late in the first session of the last Congress a bill was passed for the relief of the heirs, so far as to pay them *one-quarter* of the sum, with interest, which was wrongfully paid in 1817; with the assurance from the committee which reported the bill, that it was not intended to prejudice the further claim of the heirs to the remaining *three-quarters*, which was then withheld under an impression on the part of some of the committee, that the three-quarters had been assigned to, and was the property of, the party who got the money in 1817; but which *was not* the fact.

In all the examinations of this claim, since the favorable report of the late Virgil Maxcy, (see Senate Doc. No. 428, 24th Congress, 1st session, and see also Senate Doc. No. 344, 14th Congress, 2d session,) to whom the whole subject was referred by the Senate in 1836, Congress has expressed an unwillingness to go back of the law of 1817. This may be right; for it would seem to be a libel on the justice of the commander-in-chief to withhold "a good and

ample remuneration for all the losses consequent" on Mr. Cazeau's extraordinary services; a deliberate promise of which was contained in the identical proclamations which he circulated with such fatal hazard to himself.

Taking, then, the law of 1817 to have been just, the simple question would seem to be, was J. B. Stewart, who received the \$42,737 97 at the treasury in 1817, the authorized agent of the claimants, or was he not?

Your petitioner avers that he was not; and that no act either of Mr. Cazeau or his heirs has made the officers of the government liable, with *ordinary vigilance*, to be imposed upon or deceived by an imposter.

This averment your petitioner believes is fully supported by the report of the late Virgil Maxcy, to whom this identical question was referred to in 1836; and your petitioner, in further evidence of the same, herewith files his own affidavit.

The heirs have never denied that a power of attorney and assignment was prepared and executed in 1807 before the American consul in Paris, and that it would have been *valid authority had it been presented unrevoked*. But it was not presented or its absence accounted for, but a *mere copy*, which any one might obtain on the payment of office fees, was presented and used ten years after the original was executed, and after Mr. Cazeau, the maker, was dead, and the power revoked and returned into his hands, and which is now filed by your petitioner, bearing the real signatures of the parties, in further evidence of the fraud of J. B. Stewart.

The last action of Congress on this claim was founded on the report of General Saunders, of 27th March, 1844, who was then chairman of the Committee on the Judiciary. This report admits that "it is possible the circumstances were such that a court of equity would have enjoined the treasury from paying over the money;" but, inasmuch as it was paid in good faith, the committee are of opinion there is no obligation to pay it over again, &c.

To this your petitioner most respectfully suggests, that this poor old man, Mr. Cazeau, then in the 78th year of his age, was driven by poverty, brought upon him by his devotion to our cause, to make this last attempt, by means of this power and assignment, (which never was consummated,) in consequence of the cruel delays of Congress in withholding his just dues, and of which the sum in question, if liberally considered, would be but a small portion. All the consequences of this act, therefore, should rather be attributed to the fault of the government than his own. And your petitioner does believe there is both a moral and legal obligation on the part of government to pay at least the remaining three-quarters, with interest, which he now humbly prays may be done by an act for the relief of the said heirs.

Your petitioner only adds that the papers in support of the claim were filed in the Treasury Department in the summer of 1844, to which he begs leave to refer; also, to the report of Mr. Goldsborough in the Senate, 2d session, 14th Congress, doc. No. 74, the

report of the late Virgil Maxcy, made to the Senate in 1836, as well as the favorable reports of Mr. King, of Georgia, and Judge Strange, of North Carolina, in 1837, and that of General Saunders in 1844, (report No. 355, 1st session, 28th Congress.) And your petitioner will ever pray, &c.

J. BIGELOW,

*Administrator on the estate of François Cazeau,
an attorney for all the heirs.*

WASHINGTON, January 15, 1846.

